

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

JAN 7 2005

DAVID J. MALAND, CLERK

BY

DEPUTY

Civil Action No. 4:05CV10

DAVID PRICKETT and JODIE
LINTON-PRICKETT,
Plaintiffs,

v.

INFOUSA, INC.,
SBC INTERNET SERVICES, and
YAHOO!, INC.,
Defendants.

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NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT:

Removing Party, SBC Internet Services ("SBC Internet"), Defendant in this action, files this Notice of Removal to the United States District Court for the Eastern District of Texas, Sherman Division, pursuant to 28 U.S.C. § 1441, *et seq.*, and would respectfully show the Court as follows:

1. SBC Internet is a Defendant in the action entitled *David Prickett and Jodie Linton-Prickett v. InfoUSA, Inc., SBC Internet Services, and Yahoo! Inc.*, Cause No. 2004-61605-393, 393rd Judicial District Court, Denton County, Texas (the "State Action"), which was filed December 7, 2004 and is now pending therein.

2. Defendant SBC Internet was served with process on December 9, 2004.

3. Defendants InfoUSA, Inc. ("InfoUSA") and Yahoo! Inc. ("Yahoo") consent to this Notice of Removal.

4. Defendants SBC Internet and Yahoo have filed their Original Answer in the State Action. No further proceedings have taken place in the State Action.

5. Complete diversity exists between the parties, both at the time the Original Petition was filed and at this time of removal. According to Plaintiffs' Original Petition (the "Petition"), Plaintiffs reside in Savannah, Denton County, Texas and are citizens of the state of Texas. At the time the Petition was filed, Defendant SBC Internet was a Delaware corporation with its principal place of business in Michigan.¹ Because of a corporate restructuring effective December 31, 2004, Defendant SBC Internet is now a corporation organized and existing under the laws of the state of California, with its principal place of business in California. Defendant InfoUSA is a corporation organized and existing under the laws of the state of Delaware with its principal place of business in Nebraska. Defendant Yahoo is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business in California. Thus, complete diversity of citizenship exists as to the parties both at the time of removal and the time the Petition was filed. *See* 28 U.S.C. § 1332.

6. In their Petition, Plaintiffs claim that Defendants published erroneous information about Plaintiffs over the Internet, and assert causes of action for Defamation, Defamation—Libel *per se*, Invasion of Privacy—Intrusion on Seclusion, Invasion of Privacy—Public Disclosure of Private Facts, Trespass to Real Property, Private Nuisance, Negligence, and Intentional Infliction of Emotional Distress. Plaintiffs demand attorneys' fees, actual damages, and exemplary damages in excess of the state district Court's jurisdictional minimum.

7. Plaintiffs' Petition does not request a sum certain, but it demands actual damages of at least \$36,000 for lost property value incurred in the forced sale of Plaintiffs' home. Additionally, Plaintiffs demand expenses incurred in the sale of Plaintiffs' home, unspecified

¹ Plaintiffs' Original Petition incorrectly asserts that SBC Internet was a Texas corporation located in San Antonio, Texas. The Petition also incorrectly asserts that Yahoo is a California corporation and that InfoUSA is a Nebraska corporation. When the Petition was filed, all Defendants were incorporated under the laws of Delaware and no defendant has a principal place of business in Texas. Thus, no defendant was a citizen of Texas. 28 U.S.C. § 1332(c)(1).

medical expenses for Jodie Linton-Prickett, damages for loss of reputation, damages for emotional distress and mental anguish, and attorneys' fees. These damages claims exceed \$75,000. Plaintiffs further seek exemplary damages, which under Texas law may be "two times economic damages." TEX. CIV. PRAC. & REM. CODE § 41.008. The Fifth Circuit mandates that "exemplary damages...must be taken into account in determining whether the jurisdictional amount is present." *Marcel v. Pool Co.*, 5 F.3d 81, 82 (5th Cir. 1993). The amount in controversy therefore exceeds \$75,000.

8. In their Petition, Plaintiffs requested a jury trial in the State Action.

9. Attached to this Notice of Removal are true and correct copies of the Petition filed December 7, 2004 (Exhibit "A"), the state court's docket sheet (Exhibit "B"), the Citation served on SBC Internet agent for service of process on December 9, 2004 (Exhibit "C"), Defendant SBC Internet's First Amended Original Answer filed in the State Action on January 7, 2004 (Exhibit "D"), Defendant Yahoo's Original Answer filed in the State Action on January 7, 2004 (Exhibit "E"), and the written consent to this Notice of Removal of Defendants InfoUSA (Exhibit "F") and Yahoo (Exhibit "G").

10. Defendants are removing this action pursuant to 28 U.S.C. § 1441(a) which allows a defendant to remove "any civil action brought in a State court of which the district courts of the United States have original jurisdiction...to the district court of the United States for the district and division embracing the place where the action is pending." The United States District Courts have original jurisdiction of this action because complete diversity exists among the parties, both at the time the Petition was filed and at the time of removal, and the amount in controversy exceeds \$75,000.00. *See* 28 U.S.C. § 1332. Further, the United States District Court of the Eastern District of Texas is the proper court to which this case should be removed because the State Action was filed in Denton County, Texas. *See* 28 U.S.C. § 124(a)(1).

11. Defendant SBC Internet was served with process on December 9, 2004. Pursuant to 28 U.S.C. § 1446(b), Defendant SBC Internet filed its Notice of Removal on January 7, 2005. Thus, this Notice of Removal is being filed within thirty (30) days of the date Defendant SBC Internet was served with the Petition in the State Action.

12. Written notice of the filing of this Notice of Removal is being served this date on Plaintiffs' counsel of record.

13. A true and correct copy of this Notice of Removal will be filed with the clerk of the 393rd Judicial District Court, Denton County, Texas. A file-marked copy of the Notice of Filing of Notice of Removal that is filed in the State Action will be filed with this Court.

CONCLUSION

WHEREFORE, Defendant SBC Internet Services respectfully requests that this action proceed in this Court as an action properly removed.

Respectfully submitted,



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